

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 855 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAMALBHAI N MUMON

Versus

BADARIA MASJID

Appearance:

MR MB GANDHI for Petitioner

MR HRIDAY BUCH FOR MR. ND NANAVATI for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/11/1999

ORAL JUDGEMENT

#. This is a Revision Application under section 29(2) of the Bombay Rent Act by which the petitioner herein has challenged the judgment and decree passed by the learned Civil Judge (JD) at Patan in Regular Civil Suit No.46 of 1978 dated 27th July 1981 which was confirmed in Reg.Civil Appeal No.98 of 1981 by the learned Extra

Assistant Judge, Mehsana by his judgment and decree dated February 1982.

#. The facts leading to the present revision application are as under:

The petitioner herein is the original defendant no.1 and opponents nos 2 and 3 are the original defendants nos 2 and 3 and opponent no.1 is the original plaintiff in the original suit and they will be referred as per their original status in the suit in this judgment for the sake of convenience and brevity.

That the plaintiff is a Public Trust registered under the relevant provisions of Bombay Public Trust Act. Said Trust had filed Regular Civil Suit No. 48 of 1978 in the court of learned Civil Judge (JD) at Patan for a decree for possession of the suit property bearing Census No. 9/20/51 and 9/21/51(1) from the defendants. Aforesaid suit was filed on the ground that the plaintiff trust has got some shops near the Railway Station at Patan and the defendant no.1 took two shops bearing old Census No.9/1308(3) (4) and new Census No.9/20/51 and 9/20/51(1) at a monthly rent of Rs. 75/- for a period of 11 months and 29 days and a rent note was also executed by the defendant no.1 in favour of the plaintiff-trust. It is further the case of the plaintiff that the defendant no.1 did not hand over possession of the suit shops to the plaintiff-trust after the expiry of the contractual period and continued in the suit premises as a statutory tenant. It is further the case of the plaintiff that the defendant no.1 has paid rent upto 30.4.1974 and an amount of Rs. 3225/- is due from him towards rent for a period of 43 months i.e. from 1.5.74 to 30.11.77 and said amount of arrears of rent is not paid even though demand was made for the same. It is further averred in the plaint that the defendant no.1 had committed breach of the terms of tenancy and he has sub-let the suit shops to defendants 2 and 3 and said sub-letting is made without the consent of the plaintiff-trust. In the suit shops defendant no.2 is running a bicycle shop in the name of Good Luck Cycle Centre wherein he is giving the cycles on hire and also undertakes bicycle repairing work. Defendant no.3 has also started a dynamo shop in the name of "National Dynamo" and carries on repairing of dynamos in the said shop. According to the plaintiff, therefore, the premises in questions have been illegally sub let by defendant no.1 in favour of defendants nos 2 and 3. In this connection a notice was given by the plaintiff-trust to the defendant no.1 demanding possession of the suit

shops and arrears of rent. By the said notice the plaintiff-trust has terminated the tenancy of the defendant no.1. Since the defendant no.1 did not comply with the said notice, ultimately a suit being Regular Civil Suit No.48 of 1978 was filed by the plaintiff in the court of the learned Civil Judge (JD) at Patan. In the said suit a decree for eviction of defendants was claimed on the ground of sub-letting and arrears of rent.

In response to the summons issued by the court written statement was filed by the defendant no.1. However, defendants nos 2 and 3 did not file any written statement. In the written statement of defendant no.1, the averments and submissions contained in the plaint were denied by defendant no.1. It was also denied that the defendant no.1 was in arrears of rent in any manner. It was also prayed that standard rent should be fixed at Rs.20/- p.m. It was contended that in fact excess rent was recovered from the defendant no.1 which should be refunded to him. Defendant no.1 also denied that the premises in question were sub-let to the defendants nos 2 and 3. It was averred in the written statement that defendants nos 2 and 3 were working with the defendant no.1 on daily wage basis and they were in no way connected with the aforesaid business of defendant no.1. On the aforesaid grounds the suit of the plaintiff was resisted by the defendant no.1.

The learned Trial Judge thereafter framed necessary issues at exh.16 and recorded the evidence and after appreciating the evidence on record, came to the conclusion that the plaintiff was not entitled to get the decree for possession of the suit premises on the ground of arrears of rent. The learned Trial Judge however, came to the conclusion that the plaintiff has proved that defendant no.1 has sub let the suit premises to defendants nos 2 and 3 without the consent of the plaintiff. The standard rent of the suit premises was fixed at Rs. 75/- p.m.. Ultimately, by the judgment and decree dated 27.7.1981 the learned Civil Judge (JD) at Patan decreed the suit of the plaintiff on the ground of sub-letting and the defendant no.1 was asked to hand over peaceful and vacant possession of the premises bearing old Census No. 9/1308(3) (4) & (1) and new Census Nos. 9/20/51 and 9/20/51(1).

Being aggrieved by the aforesaid judgment and decree for possession the defendant no.1 filed an appeal being Regular Civil Appeal No. 99 of 1981 before the District Court, Mehsana.

The plaintiff -trust had also filed cross objections in so far as the decree for possession was denied to it on the ground of arrears of rent.

The learned Appellate Judge also dismissed the appeal and the cross objections. So virtually, the decree for possession was confirmed on the ground of sub-letting.

Being aggrieved by the aforesaid judgments and decree passed by the Trial Court and confirmed by the Appellate Court present Revision Application is filed by the defendant no.1 before this Court.

#. At the time of hearing of this revision application learned advocate for the petitioner submitted that the courts below committed an error of facts and law in coming to the conclusion that the petitioner defendant no.1 had sub-let the suit propriety in favour of the defendants nos 2 and 3 herein. It is argued by Mr. Gandhi that defendants nos 2 and 3 were attending the suit shop as employees of defendant no.1 and therefore, there is no question of sub-letting or parting with the possession by defendant no.1 in their favour. He further submitted that both the courts below have erred in fixing the standing rent of the premises at Rs. 75/- p.m. and it should have been fixed at Rs. 20/- p.m. As against this, Mr. Hriday Buch for the opponent no.1 strongly supported the judgments and decrees passed by both the courts below and argued that it is a clear cut case of sub-letting and after appreciating the evidence on record, both the courts below came to the conclusion that the defendant no.1 has sub-let the suit premises in favour of defendants nos 2 and 3. It is also further contended that the stand rent which has been fixed by both the courts below at Rs. 75/- p.m. was also according to the evidence on record and therefore, the aforesaid finding of fact arrived at by both the courts below is not required to be interfered with in Revision by this Court.

#. I have heard the learned advocates for both the sides and I have also perused the record of the case. So far as the question of standard rent is concerned, Mr. Gandhi learned advocate for the petitioner-defendant no.1 is not in a position to point out as to how the finding given by the courts below is erroneous. There is nothing on record to show that the standard rent fixed

was in any way erroneous and therefore, the contention of Mr. Gandhi that the standard rent should have been fixed at Rs. 20/- p.m. is required to be rejected straight way. However, the main question which is involved in this revision application is regarding the question of sub-letting. In fact the decree for possession was passed by both the courts below on the aforesaid ground. Mr. Gandhi also argued that there is no evidence on records about any consideration received by the defendant no.1 from defendants nos 2 and 3 by which it can be presumed that there is sub-letting by defendant no.1 in favour of defendants nos 2 and 3.

#. It is the specific case of the plaintiff that defendant no.1 has sub-let the suit premises bearing Census No. 9/20/51 to defendant no.2 Shaikh Rahimiya Fajuddin. He is running his bicycle shop in the name and style of Good Luck Cycle Centre in the suit premises. It is also further the case of the plaintiff that the defendant no.1 has also sub-let a portion of the suit shop i.e. premises bearing Census No. 9/20/51(1) to defendant no.3 Shaikh Ajimoddin Jafarbhahi who is running his independent business in the name and style of National Dynamo. Therefore, it is the specific case of the plaintiff that both the defendants nos 2 and 3 are doing their independent business exclusively and for that purpose they are paying rent of Rs.200/- p.m. to defendant no.1.

#. There is a clear condition in the rent note at exh.30 that defendant no.1 should not sub let or give by good will the shops to others without the consent of the plaintiff. The learned Appellate Judge has relied upon the judgment of this court reported in 20 GLR 1932 in the case of Bhagavat Spinning & Weaving Works vs. Ahmedabad New Cotton Mills Co.Ltd. regarding presumption about consideration. It is observed in the said judgment that for a landlord, it is very difficult to prove about valuable consideration as there cannot be direct evidence regarding the transaction of valuable consideration between tenant and sub-tenant. Therefore, the court can always in such case infer that the premisses are transferred with valuable consideration when some strangers are given exclusive possession of the premises. It has been held in 22 GLR 1264 in the case of Abdul Kadar Ahmed vs. Lalla Abdul Rasid that one cannot expect a landlord to be a witness to the sub-tenant paying the rent to the tenant. Therefore, considering the evidence on record and circumstances of the case the courts below have come to a definite conclusion that the premises in

question were sub-let by defendant no.1 in favour of defendants nos 2 and 3. There is nothing on record to show that there was any relation between defendant no.1 either with defendant no.2 or with defendant no.3 and therefore, it can be said that defendants nos 2 and 3 are strangers to defendant no.1. This is also one of the situation which has been found against the defendant no.1 .Defendant No.1 Jamalbhai in his deposition at exh.80 has specifically admitted that he has not got registered defendant no.2 under the Shops and Establishments Act as a servant. He has stated in his evidence that he has taken the electric connection in the suit shop in which Dynamo repairing works is being carried on and that electric connection is in his name. This fact is falsified by the evidence of defendant no.3 exh.83 who admits in his evidence that the bills of the electric charges are issued in his name as the electric connection is in the name of defendant no.3. Defendant no.3 has also admitted in his evidence that even the consumption bills are not issued in favour of defendant no.1 and they are issued in favour of defendant no.3. In this connection it may be stated that the learned appellate Judge has elaborately dealt with the evidence in the judgment and therefore, it is not possible to take a different view while exercising the powers under section 29(2) of the Bombay Rent Act. This court cannot reappreciate the evidence on record in a revision application. In fact , there is overwhelming evidence on record to show that the premises in question were sub let by defendant no.1 in favour of defendants nos 2 and 3 . It is not the case of defendant no.1 that he has taken defendants nos 2 and 3 as partners in his bicycle shop known as Good Luck Cycle Centre and Dyanamo Repairing Works respectively. The learned Appellate Judge has come to the conclusion that even considering the forms at Exhs. 57 to 60, it is sufficient to come to the conclusion that the defendants nos 2 and 3 are doing their business in the name of Good Luck Cycle Centre and Dynamo Repairing Works in their individual capacity in the suit premises. In view of the clear cut finding arrived at both by the Trial Court and lower Appellate Court, this court, while exercising its powers under section 29(2) of the Bombay Rent Act, cannot reappreciate the aforesaid evidence and can come to a different conclusion. Even otherwise, also looking to the evidence on record, it is a clear cut case of sub-letting and therefore, the decree for possession passed by the Trial Court and confirmed by the Appellate Court is not required to be interfered with by this Court.

#. In that view of the matter there is no substance in

this Revision Application and therefore, the Revision Application deserves to be dismissed and the finding given about the sub-letting is confirmed. The net result is that this Revision Application is dismissed with no order as to costs.Rule discharged .

#. However, Mr. Gandhi learned advocate for the petitioner-defendant no.1 has requested that the interim relief granted in this Revision Application earlier may be extended for a period of three months as his client wants to prefer appropriate proceedings before the Apex Court. Therefore, the stay of the decree for possession granted at the time of admission of this Revision Application ordered to continue upto 15.2.2000.